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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,587	07/20/2001	Richard O. Shuler	043340/237124	2209
826	7590	07/11/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			HARBECK, TIMOTHY M	
			ART UNIT	PAPER NUMBER
			3628	

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/909,587		SHULER ET AL.	
	Examiner		Art Unit	
	Timothy M. Harbeck		3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The amended aspect of these claims recite "the pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management and health of cattle prior to slaughter." However this is an indefinite statement as the claims do not define the limits of the "numerous" protocols or criteria. There is no way to determine the range of subject matter encompassed in this statement. The claims are therefore rejected as indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bi et al (hereinafter Bi, US PAT 6,311,178 B1) in view of Ordish et al (hereinafter Ordish, US 2001/0039527 A1) in view of Gransbery (Jim Gransbery. "Bull breeders keep track of the consumer." The Billings Gazette. Billings, Mont: Oct 17, 1995. Sec. A. pg 7.).

Re Claim 1: Bi discloses a multi-element confidence matching system and the method therefor comprising

- Receiving information defining a plurality of demand profiles at the information server from the buyer interface, wherein at least one of the demand profiles specifies a first pre condition (Column 2, lines 30-38; also see Table 1)
- Receiving information defining a supply profile at the information server from the producer interface, wherein the supply profile specifies a second pre-condition (Column 2, lines 30-38; also see Table 1)
- Comparing the supply profile to the plurality of demand profiles to determine whether a match exists between the supply profile and one of the demand profiles based at least in part on a comparison of the first and second pre conditions (Column 4, lines 9-29; Fig 2b).
- Providing an indication to one of the buyer interface and the producer interface of at least one matching demand profile in response to a match (Column 3, lines 57-60)

Bi does not explicitly disclose the step wherein the matching system is done with respect to a cattle market, specifically wherein the demand and supply profiles specify a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management and health of cattle prior to slaughter.

Ordish discloses an improved matching system for trading instruments including commodities futures contracts (Page 2, paragraph 0009). It was well known in the art at

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the time of invention that cattle markets and the trading thereon represented a form of commodities futures contracts. It would have been obvious to anyone skilled in the ordinary art at the time of invention to include the teachings of Ordish to the disclosure of Bi, because commodities such as cattle were popular trading instruments and would have been simple to include in any matching or trading system.

Gransbery discloses that breeders of cattle are becoming more aware of consumer demands for the product and have started to breed cattle with this demand in mind. Therefore it would have been obvious to anyone skilled in the ordinary art at the time of invention to include the teachings of Gransbery to the disclosure of Bi in view of Ordish so that the producers can inform potential buyers of the cattle of the specific breeding practices in order to increase the appeal to the overall market. In producing the type of cattle that the market is demanding (and being sure to announce this fact), the breeders are more likely to achieve a higher return on their investment.

Re Claim 2: Bi in view of Ordish discloses the claimed method supra and further comprising generating a bid associated with at least one of the plurality of demand profiles (Column 4, lines 50-55). Bi discloses that one of the relevant search criteria includes price and volume, which would constitute a bid.

Re Claim 3: Bi in view of Ordish discloses the claimed method supra but the references do not explicitly disclose the step of generating a bid associated with at least one of the plurality of demand profiles comprises generating a bid price based at least in part on a non-fixed public index price. However it would have been obvious to anyone skilled in the ordinary art at the time of invention to use a reference price, such as a

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non-fixed public index price, to ensure that the bid is an acceptable value and in line with current prices, and a fair trade, relative to current market conditions can be executed.

Re Claim 4: Bi in view of Ordish discloses the claimed method supra but the references do not explicitly disclose the step of receiving an acceptance of a bid from the producer interface. However, as Bi points out, the purpose of trading systems is to help traders find the goods they need from other traders (Column 1, lines 25-28). It would have been obvious to anyone skilled in the ordinary art at the time of invention to allow for the acceptance of bids so that the trade can be fully completed, which is the ultimate goal of any matching/trading system.

Re Claims 5-8: Further system claims would have been obvious from previously rejected method claims 1-4 respectively, and are therefore rejected using the same art and rationale.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bi in view of Ordish in view of Gransbery in view of Pratt (US PAT 5,673,647).

Re Claim 9: Bi discloses a multi-element confidence matching system and the method therefor comprising

- Receiving information defining a supply profile at the information server from the interface wherein the supply profile specifies a precondition (Column 2, lines 30-38; also see Table 1)

- Storing the supply profile in a database associated with the cattle information server (Column 3, lines 52-54)

Bi does not explicitly disclose the steps wherein the matching system is done with respect to a cattle market specifically wherein the demand and supply profiles specify a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management and health of cattle prior to slaughter.

Ordish discloses an improved matching system for trading instruments including commodities futures contracts (Page 2, paragraph 0009). It was well known in the art at the time of invention that cattle markets and the trading thereon represented a form of commodities futures contracts. It would have been obvious to anyone skilled in the ordinary art at the time of invention to include the teachings of Ordish to the disclosure of Bi, because commodities such as cattle were popular trading instruments and would have been simple to include in any matching or trading system.

Gransbery discloses that breeders of cattle are becoming more aware of consumer demands for the product and have started to breed cattle with this demand in mind. Therefore it would have been obvious to anyone skilled in the ordinary art at the time of invention to include the teachings of Gransbery to the disclosure of Bi in view of Ordish so that the producers can inform potential buyers of the cattle of the specific breeding practices in order to increase the appeal to the overall market. In producing the type of cattle that the market is demanding (and being sure to announce this fact), the breeders are more likely to achieve a higher return on their investment.

Furthermore, Bi does not explicitly disclose the steps of

- Verifying, by a third party, a pre-conditioning program for an identified group of Cattle
- Receiving information defining carcass characteristics of the identified group of cattle at the time of harvest from the interface
- Storing the carcass characteristics of the identified group of cattle in a database associated with the cattle information and
- Correlating the carcass characteristics of the identified group of Cattle with the supply profile

Pratt discloses a cattle management system and method comprising the steps of verifying, receiving, storing and correlating carcass characteristics of a group (feedlot) of cattle (Column 5, lines 46-54). It would have been obvious to anyone skilled in the ordinary art at the time of invention to include the teaching of Pratt to the disclosure of Bi in view of Ordish so that the parties involved in the trading process can have a record of performance of previous cattle lots, as well as a way to track the current lot in order to control to quality of the product and ensure that previously agreed upon treatments are carried out as stipulated.

Furthermore it was notoriously well known in the art at the time of invention to utilize the services of a third party in order to verify aspects of a product or service. Therefore it would have been obvious to one of ordinary skill to include this feature to the disclosure of Bi / Ordish / Gransbery / Pratt so that both parties to the transaction can be satisfied that a neutral party has evaluated the agreement and determined that

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each side is in full compliance. This prevents any possible fraud or exaggeration from either party.

Re Claim 10: Bi in view of Ordish in view of Pratt discloses the claimed method supra and Pratt further discloses the step of identifying one of a geographic location and ownership identification of at least one animal selected from the identified group of animals (Column 5, lines 46-54). The fact that the information is relayed to the producer for future reference indicates that ownership of a particular animal selected from the feedlot group can be readily determined.

Re Claim 11: Bi in view of Ordish in view of Pratt discloses the claimed method supra and Pratt further discloses the step of storing a plurality of supply profiles and correlated carcass characteristics in a database and mining the database to determine patterns between the pre-conditioning program and at least one carcass characteristic (Column 4, lines 45-54).

Response to Arguments

Applicant's arguments filed 4/25/2006 have been fully considered but they are not persuasive.

In response to applicant's argument that Bi and Ordish would not have a reasonable expectation of success and are thus not properly combinable, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of

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ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In this instance, Ordish is used simply to show the use of trading and matching systems for commodities trading, which includes the cattle market. The examiner maintains that the combined teachings of the two references would have suggested the present invention to a person of ordinary skill in the art. The Gransbery reference was added in light of the amendments to the claims. Simply put, the Gransbery reference shows how breeders design programs for producing cattle based on market demand. The examiner contends that it would therefore be obvious for these producers to disclose the fact that they utilize preferred breeding methods in order to place themselves in a better market position when it comes time to sell the product.

With regards to the applicant's arguments for claims 2-4, again, the test for obviousness is not that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. It is not strictly objective teachings, but rather certain suggestions in the prior art teachings that would lead a person of ordinary skill in the art to certain conclusions. To adequately traverse these rejections, applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. (See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241.) The applicant has not pointed to any errors in the examiners action with regards to why the facts are not considered to be common knowledge and therefore the rejections for claims 2-4 are maintained.

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With regards to claims 5-8, the examiner maintains that, in light of the method claims, which recite essentially identical limitations as these system claims, that it would have been obvious to design a structure capable of performing the disclosed method. This would allow for an actual result to be achieved. Therefore the same art and rationale used to reject the method claims, can be applied to the system claims designed to implement said method.

With regards to claims 9-11 that applicant contends that the references disclose a matching system which is not a limitation of the claim 9. While this is true, it is also true that the references suggest explicitly or provide motivation for each limitation provided in the claims. While the references may take the process a step further (such as actually matching the supply profiles with demand profiles), the limitations are still disclosed.

With regards to claims 11 the applicant contends that the references do not teach the mining of a database to determine patterns between a pre-conditioning program and at least one carcass characteristic. However the Pratt reference shows a computerized system for monitoring by weight (carcass characteristic) patterns in a pre conditioning program (placement in a feedlot). Furthermore it is disclosed that this information could be used to determine an animal's economic and physical performance and value (Column 4, lines 45-63). This information represents a pattern determined from the pre-conditioning program and the carcass characteristic. Furthermore, the applicant has submitted that "one of ordinary skill in the art would appreciate that mining a database to determine a pattern includes discovering previously unknown relationships among

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the data," which would constitute an additional obviousness rejection although the examiner does not believe one is necessary given the disclosure of the prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Harbeck whose telephone number is 571-272-8123. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Souh can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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